

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

In re: RESTASIS (CYCLOSPORINE
OPHTHALMIC EMULSION) ANTITRUST
LITIGATION

18-MD-2819 (NG) (LB)

This Document Relates To:
All End Payor Class Actions

JOINT STIPULATION ALLOWING SETTLEMENT PAYMENT TO MSP

WHEREAS certain claims were previously asserted in this multidistrict litigation by Plaintiffs MSP Recovery Claims, Series LLC, MSPA Claims 1, LLC, and MAO-MSO Recovery II, LLC, Series PMPI (collectively, “MSP”);

WHEREAS, on or about October 2021, MSP and Defendant Allergan, Inc. resolved the claims asserted by MSP in a settlement agreement (the “MSP Settlement Agreement”), Allergan then made a settlement payment to MSP, and MSP agreed to dismiss its claims against Allergan;

WHEREAS, the MSP Settlement Agreement included a term providing that, depending on the size of a future settlement between Allergan and the End Payor Plaintiff (“EPP”) class, Allergan might need to make a supplemental payment to MSP;

WHEREAS, on August 2, 2022, this Court issued an order finally approving a settlement between Allergan and the EPP class of \$29,999,999.99 (the “Final Approval Order”);

WHEREAS, based on the finally approved EPP Settlement amount, Allergan owes a supplemental payment to MSP pursuant to the MSP Settlement Agreement (the “Supplemental Payment”);

WHEREAS, on August 3, 2022, with no opposition from Allergan or any other party, this Court also granted EPPs’ motion for a set-aside order, which provided, inter alia, that “In the

event a person or entity that opts out of the End-Payor Class (an “opt-out plaintiff”) obtains a settlement or judgment related to claims arising from Allergan’s alleged efforts to delay the introduction of generic Restasis” Allergan shall set aside 12.5% of the total monetary value of such settlement or judgment (the “Set-Aside Order”);


WHEREAS, it is unclear to Allergan that a supplemental payment made pursuant to a settlement agreement entered into *prior to* the Set Aside Order is subject to the Set-Aside Order, but Allergan has requested this Stipulation and Order prior to making the Supplemental Payment to MSP;


WHEREAS, Allergan and MSP have informed counsel for EPPs of the approximate amount of the Supplemental Payment;

WHEREAS, based on Allergan’s and MSP’s representations, counsel for EPPs is willing to waive any argument that the Supplemental Payment is subject to the Set Aside Order; and

IT IS THEREFORE STIPULATED AND AGREED, subject to the Court’s approval, that the Set Aside Order shall not prohibit Allergan from making the full Supplemental Payment to MSP, without the need to withhold 12.5%.

SO ORDERED this 7th day of February 2023.

 /s/(NG)

HONORABLE NINA GERSHON
UNITED STATES DISTRICT JUDGE
Feb. 7, 2023 

Dated: February 6, 2023

By: /s/ Eric B. Fastiff

Eric B. Fastiff
Dan Drachler
David T. Rudolph
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
efastiff@lchb.com
ddrachler@lchb.com
drudolph@lchb.com

Dena C. Sharp
Scott M. Grzenczyk
Tom Watts
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dsharp@girardsharp.com
scottg@girardsharp.com
tomw@girardsharp.com

Joseph R. Saveri
JOSEPH SAVERI LAW FIRM, INC.
601 California Street, Suite 1000
San Francisco, California 94108
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
jsaveri@saverilawfirm.com

End-Payor Co-Lead Counsel

Robert S. Schachter (RS 7243)
ZWERLING, SCHACHTER &
ZWERLING, LLP
41 Madison Avenue, 32nd
New York, NY 10010
Telephone: (212) 223-3900

By: /s/ Eric Stock

Eric J. Stock
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Tel: (212) 351-4000
Fax: (212) 351-4035
estock@gibsondunn.com

Matthew C. Parrott
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612-4412
Tel.: (949) 451-3800
Fax: (949) 451-4220
mparrott@gibsondunn.com

Attorneys for Defendant Allergan, Inc.

Facsimile: (212) 371-5969
rschachter@zsz.com

End- Payor Liaison Counsel

/s/ Tracy L. Turner
Christopher L. Coffin
Tracy L. Turner
PENDLEY, BAUDIN & COFFIN LLP
1100 Poydras Street, Suite 2225
New Orleans, Louisiana 70163
Telephone: (504) 355-0086
ccoffin@pbclawfirm.com
tturner@pbclawfirm.com

*Counsel for Plaintiffs MSP Recovery
Claims, Series LLC, MSPA Claims 1,
LLC, and MAO-MSO Recovery II, LLC,
Series PMPI*